



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OKLAHOMA EDUCATIONAL TELEVISION)
AUTHORITY FOUNDATION, INC.,)

DEC 21 2018

RICK WARREN
COURT CLERK

31

Plaintiff,

v.

Case No.: CJ-2018-6717

OKLAHOMA EDUCATIONAL
TELEVISION AUTHORITY,

Defendant/Third-Party Plaintiff,

v.

CYNTHIA REID, MIA MASCARIN OVEN,
LINDA GARDNER, P. DAVID GILLETT,
AND DAPHNE DOWDY,

Third-Party Defendants

**DEFENDANT OETA'S COUNTERCLAIMS AGAINST PLAINTIFF FOUNDATION
AND THIRD-PARTY PETITION AGAINST THIRD PARTY DEFENDANTS**

COMES NOW the Defendant, Oklahoma Educational Television Authority ("OETA") for its counterclaims against Plaintiff, Oklahoma Educational Television Authority Foundation, Inc. (the "Foundation") and claims against Third Party Defendants Cynthia Reid, Mia Mascarin Oven, Linda Gardner, P. David Gillett and Daphne Dowdy (collectively, the "Board") in her or his official capacity as a Board of Trustees or Officer of Oklahoma Education Television Authority Foundation, Inc., (collectively, "Plaintiffs"), alleges and states as follows:

JURISDICTION AND VENUE

1. OETA is an authority statutorily created by the Oklahoma Legislature which conducts business in the State of Oklahoma and is headquartered in Oklahoma County.

2. Plaintiff, Oklahoma Education Television Authority Foundation (“Foundation”) is a non-profit corporation headquartered and operated in Oklahoma County, State of Oklahoma.

3. Upon information and belief, Third Party Defendant Cynthia Reid is a member of the Board of Trustees of the Foundation and a resident of the State of Oklahoma.

4. Upon information and belief, Third Party Defendant Mia Mascarin Oven is a member of the Board of Trustees of the Foundation and a resident of the State of Oklahoma.

5. Upon information and belief, Third Party Defendant Linda Gardner is a member of the Board of Trustees of the Foundation and a resident of the State of Oklahoma.

6. Upon information and belief, Third Party Defendant P. David Gillett is a member of the Board of Trustees of the Foundation and a resident of the State of Oklahoma.

7. Upon information and belief, Third Party Defendant Daphne Dowdy is an Officer of the Foundation and a resident of the State of Oklahoma.

8. Venue in this Court is proper pursuant to 12 O.S. §§134 and 1653.

**FACTUAL BACKGROUND AND MATTERS COMMON
TO EACH CAUSE OF ACTION**

9. In May of 1953, the Oklahoma Legislature statutorily created OETA, a broadcast television authority, to provide educational television programming to the citizens of Oklahoma through a license with the Federal Communications Commission (“FCC”).

10. In 1982, Senate Bill 454 was passed by the Oklahoma Legislature, stating in relevant part that the intent is that OETA:

seek ways to encourage contributions by private individuals, companies, foundations, corporations and others in the private and public sectors by cooperating with a public, nonprofit foundation. Such foundation would operate for the exclusive purpose of receiving, investing and expending privately donated nonstate appropriated funds for educational and eleemosynary purposes related to the support, promotion, development and growth of educational and public

broadcasting in Oklahoma. [OETA] shall make a full report annually on the activities of the nonprofit foundation to the Governor and the Legislature.

11. 70 O.S. § 23-122 requires OETA to provide a report annually to the Oklahoma Legislature.

12. The Articles of Incorporation of the Foundation, filed February 3, 1983, state that the purpose of the Foundation is:

...to receive, invest and expend privately donated non-state appropriated funds for educational purposes related to the support, promotion, development and growth of educational and public broadcasting in Oklahoma. **This corporation shall direct all of its efforts to the support of the Oklahoma Educational Television Authority**, a state agency created by the Oklahoma Legislature, hereinafter referred to as OETA. In this regard, [the Foundation] shall create a fund to be used for any program, project or enterprise and **undertaken in the interest of OETA**, to fund, support and maintain the operating of such other projects and programs the corporation may from time to time deem advisable and to provide financial support to all personnel who may be required in the operation and administration thereof, and to foster and promote educational and cultural interests in the State of Oklahoma.” (emphasis added).

13. Following the intent of the Oklahoma Legislature, OETA and Plaintiffs entered into an agreement on February 26, 1992, to facilitate cooperation to advance OETA’s mission to support, promote, and continue the growth of educational broadcasting in Oklahoma (“Agreement”).

14. The Agreement acknowledges the Foundation operates for the “exclusive purpose of receiving, investing and expending privately donated non-state appropriated funds for educational and eleemosynary purposes related to the support, promotion, development and growth of education and public broadcasting in Oklahoma.”

15. Since 2006, OETA has leased office and studio space from Griffin Television OKC, LLC (“Griffin”) located at 7403 North Kelley Avenue, Oklahoma City, Oklahoma, 73111 (“OETA Building”).

16. Plaintiffs neither pays rent nor has a lease with either OETA or Griffin; rather it is a tenant-at-will occupying office space within the OETA Building.

17. Plaintiffs have since made lavish improvements to the office space occupied by Foundation.

18. In the fall of 2018, Foundation personnel began to deny access to OETA employees to communal areas previously accessible to OETA and Foundation employees throughout the OETA building. Multiple signs were hung in the building which read: "ONLY OETA FOUNDATION EMPLOYEES ALLOWED PAST THIS POINT" and "FOUNDATION STAFF ONLY."

19. Around December 27, 2017 an OETA employee was walking toward the only vending machine available in the building and was accosted by a Foundation employee intending to prevent access to the vending machine.

20. Around the end of 2017, an OETA employee was trying to gather information needed to complete a Corporation for Public Broadcasting ("CPB") report as the report deadline was nearing. The OETA employee walked to the Foundation, found the Foundation employee with the information and returned to his office to finalize the report. The following week the employee was approached by the Foundation president and another employee and told not to communicate with Foundation employees directly and all future communications should be routed through the Foundation president. During that conversation the Foundation president also relayed that the employee would no longer have access to certain portions of the building on the "Foundation's side" of the building.

21. On December 12 and 13, 2018, a team of locksmiths and contractors arrived at the OETA Building and began to work on locks and measure for the construction of doors, which if installed, would prevent OETA staff from access to certain locations.

22. Because the Foundation is the public non-profit designated to raise and manage funds, and not licensed to broadcast television programming, it has been the long-standing practice, and the Agreement makes clear, that OETA, as the FCC licensee, must approve all material prepared by the Foundation.

23. Plaintiffs, using funds received on behalf of OETA, produced content and began advertising the date it would be broadcast on OETA even though the program was not vetted for compliance with FCC rules or approved by the OETA Program Evaluation Group.

24. Plaintiffs have refused to provide funds which were approved in the annual budget to OETA.

25. In violation of CPB rules, the Plaintiffs co-mingled grant funds and forwarded one check to OETA, which, if accepted, could also have caused OETA to violate CPB rules.

26. The Plaintiffs used funds received on behalf of OETA to produce program content, and because of the Foundation's lack of understanding of FCC rules, had to be pulled from because Plaintiffs refuse to share information necessary for OETA to determine compliance with all FCC rules.

27. The Plaintiffs unilaterally removed OETA's name from the Odyssey program guide and replaced it with OETA Foundation after years of the publication being under the control and direction of OETA. Plaintiffs also indicated it would only include a monthly message from the Executive Director, as has been the practice, only if space is available.

CLAIMS FOR RELIEF

Count I: Declaratory Relief

28. OETA incorporates the allegations in paragraphs 1 through 27 above as if fully set forth herein.

29. OETA can designate a public non-profit to encourage contributions by private individuals, companies, foundations, corporations and others in the public and private sectors.

30. OETA has the right to designate and enter into an agreement with another public non-profit foundation for the purpose of encouraging contributions by private individuals, companies, foundations, corporations and others in the public and private sectors.

31. OETA has the right to terminate the Agreement with the Foundation.

32. If OETA designates another public non-profit foundation as its charitable partner, OETA can request all the funds, property and assets Plaintiffs have received and invested to be transferred to OETA's designated public non-profit foundation, and Plaintiffs are required to immediately transfer all funds received and invested to OETA's designated public non-profit foundation.

33. Any and all funds received, managed and invested, including all funds in any endowment, are for the sole and exclusive use and benefit of OETA.

34. Plaintiffs owes a fiduciary duty to OETA as the trustee of funds of held for the sole benefit of OETA.

35. Funds, assets and property received, invested, and/or managed by Plaintiffs are held in constructive trust by Plaintiffs for the benefit of OETA.

36. OETA seeks declaratory judgment against Plaintiffs pursuant to 12 O.S. § 1651 *et. seq.* that an actual, justiciable controversy exists between the parties and a declaratory judgment setting forth their rights and obligations to the funds is necessary.

37. Accordingly, OETA seeks a declaratory judgment as follows:

A. A declaration from this Court that OETA can designate a public non-profit foundation to encourage contributions by private individuals, companies, foundations, corporations and others in the public and private sectors.

B. A declaration from this Court that OETA has the right to designate and enter into an agreement with another public non-profit foundation for the purpose of encouraging contributions by private individuals, companies, foundations, corporations and others in the public and private sectors.

C. A declaration from this Court that OETA has the right to terminate the Agreement with the Foundation.

D. A declaration from this Court that if OETA designates another public non-profit foundation as its charitable partner, OETA can request all the funds, assets and property the Plaintiffs has received and invested to be transferred to OETA's designated public non-profit foundation, and Plaintiffs are required to immediately transfer all funds received and invested to OETA's designated public non-profit foundation.

E. A declaration from this Court that any and all Funds received, managed and invested by Plaintiffs, including all funds in any endowment, are for the sole and exclusive use and benefit of OETA.

F. A declaration from this Court that the Plaintiffs owes a fiduciary duty to OETA as the trustee of funds of held for the sole benefit of OETA.

G. A declaration from this Court that funds received, invested, and/or managed by Plaintiffs are held in constructive trust by the Plaintiffs for the benefit of OETA.

WHEREFORE, OETA seeks declaratory judgement as set forth herein, and that it may be awarded such other relief as this Court deems just and proper.

Count II: Accounting

38. OETA incorporates the allegations of paragraphs 1 through 37 of this Counterclaim as if fully set forth herein.

39. Senate Bill 454 mandates that OETA shall “make a full report annually on the activities of the nonprofit foundation to the Governor and Legislature” and 70 O.S. § 23-122 requires OETA to provide a report annually to the Oklahoma Legislature.

40. Plaintiffs have withheld important and necessary information, preventing OETA from fulfilling these statutory reporting obligations.

41. Accordingly, and because of the trust relationship between OETA and Plaintiffs, OETA is entitled to a complete and accurate accounting from Plaintiffs beginning January 1, 2013 to the present, of all funds and property held by the Plaintiffs to determine the amount received, invested and managed.

OETA reserves the right to amend this pleading to include any claims that are revealed by the accounting.

Prayer for Relief

WHEREFORE, Defendant OETA prays for judgment against Plaintiffs and for relief from the Court as follows: but not limited to:

- (i) Declaratory relief as set forth in this pleading;
- (ii) An accounting of all funds, assets and property held by the Foundation;

(iii) such further legal or equitable and proper relief to which OETA may be entitled.

Respectfully submitted,



Michael Burrage, OBA No. 1350
Patricia A. Sawyer, OBA No. 30712
J. Renley Dennis, OBA No. 33160
512 North Broadway, Ste 300.
Oklahoma City, OK 73102
Telephone (405) 516-7800
mburrage@whittenburragelaw.com
psawyer@whittenburragelaw.com
jdennis@whittenburragelaw.com

ATTORNEYS FOR DEFENDANT/THIRD-
PARTY PLAINTIFF

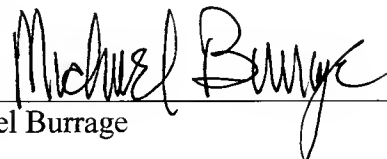
JURY TRIAL DEMANDED

CERTIFICATE OF MAILING

This is to certify that on this 21st day of December, 2018, a true and correct copy of the above and foregoing was sent via certified mail to the following counsel of record:

Frederick J. Hegenbart, OBA No. 10846
Kent B. Rainey, OBA No. 14619
Adam S. Breipohl, OBA No., 32358
525 S. Main Street, Suite 700
Tulsa, OK 74103
Telephone: (918) 585-9211
Facsimile: (918) 583-5617
Email: fredh@rfrlaw.com
borainey@rfrlaw.com
adamb@rfrlaw.com

**ATTORNEYS FOR PLAINTIFF, OKLAHOMA
EDUCATIONAL TELEVISION AUTHORITY
FOUNDATION**



Michael Burrage